RECENT DECISIONS

AUTOMOBILES—FAILURE TO REGISTER AS BAR TO RECOVERY FOR DAMAGE.—An automobile which had not been registered as required by statute was damaged in a collision with a street car. *Held*, the failure to register does not bar a recovery against the railroad company. *Birmingham Ry., etc., Co.* v. *Liability Co.* (Ala.), 64 So. 44.

It is the general rule that one who is injured while violating the law is nevertheless entitled to recover, unless there is a causal connection between the violation of law and the injury. *Lindsay* v. *Checci* (Del.), 80 Atl. 523, 35 L. R. A. (N. S.) 701; *Welch* v. *Wesson*, 6 Gray (Mass.) 505; COOLEY, TORTS, 151. So the owner of stock may recover for their injury by a railway train, though they were running at large in violation of a statutory provision. *Alabama, etc., R. Co.* v. *McAlpine*, 71 Ala. 545. And where a city ordinance prohibits the hitching of horses on a public street, one who injures a horse so hitched is nevertheless liable. *Steele* v. *Burkhardt*, 104 Mass. 59, 6 Am. Rep. 191.

Under a statute prohibiting the operation of unlicensed automobiles on the highways of the state, it was held that a machine so operated was a trespasser on the highway, and the owner could not recover for an injury caused by negligence. *Dudley* v. *Northampton R. Co.*, 202 Mass. 443, 89 N. E. 25, 23 L. R. A. (N. S.) 561; *Chase* v. *N. Y. C. R. Co.*, 208 Mass. 137, 94 N. E. 377. But in a later case the scope of these decisions is restricted, and the operation of an automobile by an unlicensed chauffeur is held only evidence of negligence. *Bourne* v. *Whitman*, 209 Mass. 155, 95 N. E. 404, 35 L. R. A. (N. S.) 701.

The owner of an unregistered machine may recover for injuries sustained through defects in the public street. *Hemming* v. *New Haven*, 82 Conn. 661, 74 Atl. 892, 25 L. R. A. (N. S.) 734. A New York case holds that the operation of an unlicensed automobile is not *prima facie* proof of negligence. *Hyde* v. *McCleery*, 145 App. Div. 729, 130 N. Y. Supp. 269.

Contributory negligence, adduced from the mere fact of non-registry, is an untenable ground to bar recovery in such cases. The non-registry is a condition not a cause at the time of the accident. To charge contributory negligence it must appear that the plaintiff has committed a causal act. But where a statute prohibits the operation of an unregistered automobile, then the view taken in some cases that such an automobile is a trespasser would seem to be reasonable.

CONTRACTS—FREE TRANSPORTATION—LEGAL IMPOSSIBILITY OF PERFORMANCE.—A railroad company contracted to issue to plaintiff an annual interstate pass in consideration of a right of way grant across the latter's land. The contract was subsequently rendered impossible of performance on the part of the railroad by an act of Congress. *Held*, the company should pay the grantor a reasonable sum for the right of way, deducting what he had already received under the contract in the form

of transportation; but the relief granted cannot be based upon the contract or a breach thereof, but as a substituted medium of payment. *L. & N. R. R. Co.* v. *Crowe* (Ky.), 160 S. W. 759. See NOTES, p. 561.

CONTRACTS—VALIDITY—CUSTODY OF CHILD.—A divorcee entered into a contract with her father-in-law whereby she turned over the custody and control of her child to him in consideration whereof he agreed to care for and educate the child and to pay to the mother during her life a sum of money in the nature of an annuity sufficient to support her. *Held,* the contract is not void as against public policy and the mother can recover her arrears of annuity. *Clark* v. *Clark* (Md.), 89 Atl. 405.

An agreement whereby a parent divests himself of the custody and control of his child is generally held void as against public policy. *People* v. *Mercein,* 3 Hill (N. Y.) 399, 38 Am. Dec. 644; *Weir* v. *Marley,* 99 Mo. 484, 6 L. R. A. 672; SPENCER, DOM. REL., 436. But this rule is subject to the qualification that the welfare of the child is of primary importance. *Bonnett* v. *Bonnett,* 61 Ia. 198, 47 Am. Rep. 810; *Carpenter* v. *Carpenter,* 149 Mich. 138, 112 N. W. 748; *State* v. *Porter,* 78 Neb. 811, 112 N. W. 286. Unless such contract is contrary to some constitution or statute, the only public policy it could contravene is sound policy and good morals. *Trist* v. *Child,* 21 Wall. (U. S.) 441; *McCowen* v. *Pew,* 153 Cal. 735, 96 Pac. 893. Where the contract is between members of the same family, as in the principal case, and is beneficial to the child as well as to the parent, it is difficult to see how it could be contrary to any rule of policy or code of morals. On the contrary, sound policy and good morals should demand the upholding of such contract whereby both the parties in interest and the state are benefited. Such contracts are not void as against public policy; and, being valid, are enforceable *in solido. Enders* v. *Enders,* 164 Pa. St. 266, 30 Atl. 129, 44 Am. St. Rep. 598, 27 L. R. A. 56; *Crisholm* v. *Chisholm,* 40 Can. Sup. Ct. 115, 11 A. & E. Ann. Cas. 213.

CRIMINAL LAW—VENUE—BRINGING STOLEN PROPERTY INTO A STATE.—The defendant was charged with stealing property in one state and bringing it into another. *Held,* he is guilty of larceny in the latter state. *Hobbs* v. *Commonwealth* (Ky.), 162 S. W. 104.

It seems settled that a person stealing an article in one county and bringing it into another in the same state may be convicted of larceny in the latter county. By a legal fiction of the common law each moments retention is considered as a fresh asportation. *Commonwealth* v. *Cousins,* 2 Leigh (Va.) 708; *Commonwealth* v. *Hayes,* 140 Mass. 366, 5 N. E. 264. A number of the states have statutes declaratory of the common law rule. *Kidd* v. *State,* 83 Ala. 58, 3 So. 442; *Green* v. *State,* 114 Ga. 918, 41 S. E. 55. But when the crime is a compound larceny such as burglary it cannot be tried in the latter county because all of the necessary elements are not present. *Gage* v. *State,* 22 Tex. Crim. App. 123, 2 S. W. 638.

When larceny is committed and the stolen property is taken into another state a more difficult question arises and one on which the au-